

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

Plaintiff,

CRIMINAL NO. 00-108 (DRD)

v.

FERNANDO GOMEZ-ROSARIO,

Defendant

MOTION TO BE RELIEVED AS COUNSEL

TO: Clerk, United States District Court
for the District of Puerto Rico
150 Avenida Carlos Chardon
San Juan, Puerto Rico 00981-1741

COMES NOW attorney, Linda George, who respectfully submits by way of this motion, a request for an Order to be relieved as counsel in the above captioned matter, based on the following:

1. On October 30, 2002 , the undersigned attorney filed a Notice of Appearance as counsel for defendant Fernando Gomez- Rosario (hereinafter "Defendant/Gomez.") D.E. 211. Counsel represented defendant at trial which commenced on February 19, 2003, D.E. 242, and ended in a mistrial on February 27, 2003, declared subsequent to counsel's pursuit of Rule 29 relief D.E. 254.

2. On March 12, 2003, the government filed a two count superseding indictment. Count One charged conspiracy to import into the United States approximately 975 grams of heroin in violation of 21 U.S.C. §§952(a) and 963. Count Two charged conspiracy to possess with intent to distribute approximately 975 grams of heroin in violation of 21 U.S.C. §§841(a) and 846. D.E. 264.

3. Counsel continued to represent defendant in his defense of the superseding

indictment, but on March 28, 2003, defendant moved to proceed *pro se*. D.E. 274. Sometime thereafter, his motion was granted, but with stand-by counsel.

4. On June 18, 2003, trial on the superseding indictment commenced before the Honorable George Singal. D.E. 334. Defendant moved once again to proceed *pro se*. D.E. 346. That motion was granted. Defendant, however, decided to rescind that motion and counsel proceeded to represent defendant at trial, to its conclusion on June 26, 2003. The jury found the defendant guilty as to Count One, but determined that the weight of the drugs involved in that count was less than 100 grams. Defendant was found not guilty as to Count Two. D.E.354.

5. Defendant then filed a flurry of motions to have counsel withdraw from further representation. D.E. 365, 366, 367. On August 27, 2003, the court granted defendant's request and permitted counsel to withdraw, and Miriam Ramos was assigned as his counsel. D.E. 370. With attorney Miriam Ramos at his side, defendant was sentenced by the Hon. George Singal on November 21, 2003 to a term of 121 months D.E. 395.

6. On July 8, 2003, several months prior to sentencing, defendant began to file numerous documents, including a separate civil claim of "breach of contract" against the undersigned counsel. *See* 03-CV- 01738 (JAF), D.E. 1. The court, upon review of this filing, noted that it appeared that the purpose of this claim was to create a record of conflict so as to avoid further representation by the undersigned counsel. Nonetheless, the civil proceeding continued until December 2, 2004 when the matter was dismissed by the Hon. Jose A. Fuste, Ch.,U.S.D.J. D.E. 9. A judgment of dismissal was filed on December 3, 2004. D.E. 10.

7. On December 22, 2004, defendant appealed from the dismissal of his civil case. D.E. 11. Notwithstanding several notices by the First Circuit Court of Appeals as to potential default, the appeal remains pending. Plaintiff/Appellant Gomez recently filed his brief on September 2, 2005.

The undersigned counsel/appellee's responding brief is due on October 6, 2005.

8. On August 12, 2005, the United States Court of Appeals issued its decision to remand defendant's criminal appeal to the District Court for resentencing in light of *Booker*. The district court has set October 21, 2005 as a date for resentencing. The court further issued a writ of habeas corpus to compel defendant's appearance. In conjunction with the scheduling of the resentencing proceedings, the court also advised the undersigned counsel.

9. It is in response to this notification that counsel now moves to present this honorable court with the relevant record concerning her representation of Gomez and to seek a review of its continued propriety. As explained, there is presently an appeal pending in the United States Court of Appeals concerning litigation brought by Gomez against the undersigned counsel. Further, the proverbial torch has already been passed to counsel Miriam Ramos. Accordingly, while the undersigned does extend her best wishes to all, it is respectfully requested that the court enter an order, once again, relieving her of any obligation that may exist to participate further in this matter.

CONCLUSION

For the reasons expressed above, the relief requested in this motion should be granted.

Respectfully submitted,

Dated: September 14, 2005

S/LINDA GEORGE (USDC-PR No. 214813)
Attorney at Law

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CERTIFICATION OF SERVICE

I, Beatrice Kerwin, hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Hon. Daniel R. Dominguez (courtesy copy)
United States District Court Judge
United States District Court for the District of Puerto Rico
150 Avenida Carlos Chardon
San Juan, Puerto Rico 00918

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Office of the United States Attorney
District of Puerto Rico
350 Torre Chardon Room 1201
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Fernando Gomez-Rosario
MDC Guaynabo
Road 165 Plaza Provision
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VIA REGULAR MAIL

Beatrice Kerwin

Dated: September 15, 2005